

United States Court of Appeals
For the Eighth Circuit

No. 15-1372

Andre Deon McEwing

Plaintiff - Appellant

v.

Shores, Lieutenant, Varner Unit, Arkansas Department of Correction; Robert Hutcheson, Sergeant, Varner Unit, Arkansas Department of Correction; Cockrell, Sergeant, Varner Unit, Arkansas Department of Correction; Hayes, Sergeant, Varner Unit, Arkansas Department of Correction; J. Byers, Major, Varner Unit, Arkansas Department of Correction; James Plummer, Sergeant, Varner Unit, Arkansas Department of Correction; J. Price, Property Officer, Varner Unit, Arkansas Department of Correction; Newton, Nurse, Varner Unit, Arkansas Department of Correction

Defendants - Appellees

M. Rowe, Nurse, Varner Unit, Arkansas Department of Correction

Defendant

Floria Washington, Sergeant, Varner Unit, Arkansas Department of Correction; Tonda Spencer, Sergeant, Varner Unit, Arkansas Department of Correction; Minnie Drayer, Administrative Disciplinary Judge, Varner Unit, Arkansas Department of Correction; J. Banks, Unit Warden, Varner Unit, Arkansas Department of Correction; Benny Moore, CO II, Varner Unit, Arkansas Department of Correction; Mark Allen, CO II, Varner Unit, Arkansas Department of Correction; Derrick Jones, CO II, Varner Unit, Arkansas Department of Correction; Stephen Poe, Sgt.; Patricia Cooley, Sgt., Varner Unit, Arkansas Department of Correction; Stevens, Captain, Varner Unit, Arkansas Department of Correction; Johnson, Lieutenant, Varner Unit, Arkansas Department of

Correction; S. Byers, Nurse, Varner Unit, Arkansas Department of Correction;
Gene Carol Ables, Varner Unit, Arkansas Department of Correction

Defendants - Appellees

Appeal from United States District Court
for the Eastern District of Arkansas - Pine Bluff

Submitted: April 14, 2016
Filed: May 12, 2016
[Unpublished]

Before LOKEN, BYE, and KELLY, Circuit Judges.

PER CURIAM.

Arkansas inmate Andrew Deon McEwing appeals the district court's¹ dismissal of his 42 U.S.C. § 1983 action following an evidentiary hearing. We agree with the district court that McEwing failed to establish Eighth Amendment violations—either the use of excessive force or deliberate indifference to his serious medical needs—by the Arkansas Department of Correction defendants. See Johnson v. Bi-State Justice Ctr., 12 F.3d 133, 135-36 (8th Cir. 1993) (where both sides present evidence in evidentiary hearing so that procedure resembles summary judgment motion with live evidence, standard is whether evidence is so one-sided that one party prevails as matter of law, or presents sufficient disagreement to require submission to jury). In McEwing's opening brief, he does not challenge the dismissal of nurses Newton,

¹The Honorable D.P. Marshall, Jr., United States District Judge for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable Joe J. Volpe, United States Magistrate Judge for the Eastern District of Arkansas.

S. Byers, and Gene Ables for failure to exhaust administrative remedies, and we decline to consider the challenge to their dismissals that he raises for the first time in his reply brief. See Martin v. Am. Airlines, 390 F.3d 601, 608 n.4 (8th Cir. 2004).² The judgment of the district court is affirmed. See 8th Cir. R. 47B.

²McEwing has abandoned some claims and issues. See Hess v. Ables, 714 F.3d 1048, 1051 n.2 (8th Cir. 2013) (claim waived where appellant failed to brief court on why dismissal was improper); Rotskoff v. Cooley, 438 F.3d 852, 854-55 (8th Cir. 2006) (undeveloped issue is waived).